

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ANTONIO PERGAMO, et al.,

No. C 08-04737 CRB

Plaintiffs,

**ORDER DISMISSING CASE WITH  
PREJUDICE**

v.

HOMEcomings FINANCIAL, et al.,

Defendants.

Plaintiffs, representing themselves, filed this contract/fraud action in connection with a home loan plaintiffs received from defendants and the apparent foreclosure of their home.

The "Factual Background" of the original Complaint stated in its entirety:

On August 21, 2006, HOMEcoming FINANCIAL LLC, through their agents loan officers (Does 1 through 10) did verbally represent to the plaintiffs that they were approved for a loan in the first amount of \$701,120.79 in United States to profit the defendants, by charging excessive interest and did so collect excessive interest payments from the plaintiff and less than 0%-0% credited to the principle [sic] they claimed is at risk.

Complaint at p. 2. Plaintiffs asked the Court to empanel a Grand Jury to investigate the defendants, to arrest defendants, and to enjoin the sale of plaintiffs' property. They made claims for breach of contract/covenant of good faith and fair dealing (First Cause of Action); fraud and racketeering (Second Cause of Action); usury and racketeering (Third Cause of Action); and intentional infliction of emotional distress (Fourth Cause of Action).

1 The Court also noted that while the jurisdiction section of the Complaint recited that  
2 the action arises under various federal statutes, the Complaint in fact made only state law  
3 claims (breach of contract, emotional distress, fraud); thus, this Court did not have federal  
4 question jurisdiction of the complaint. See 28 U.S.C. § 1331. The Court also explained that  
5 it did not have diversity jurisdiction as the Complaint recited that at least one of the  
6 defendants is a citizen of California, as are plaintiffs. Complaint at p. 2; 28 U.S.C. § 1332.

7 Accordingly, the Court dismissed plaintiffs' Complaint with leave to amend. In  
8 particular, the Court ordered plaintiffs to file an amended complaint of which this Court has  
9 jurisdiction and which clearly sets forth the facts giving rise to plaintiffs' claims. The Court  
10 also suggested that plaintiffs seek assistance from the Legal Help Center, located at the  
11 federal courthouse, 450 Golden Gate Avenue, San Francisco, on the 15<sup>th</sup> Floor, room 2796.

12 Now pending before the Court is plaintiffs' First Amended Complaint. It is nearly  
13 identical to the original complaint and the Court still lacks federal question or diversity  
14 jurisdiction. It still includes only state law causes of action and plaintiffs are still not diverse  
15 from all of the defendants. In addition, it does not state a basis for relief as the only  
16 additional factual allegation in the Amended Complaint is that plaintiffs' had a second loan  
17 in the amount of \$170,000 in addition to the first loan.

18 Accordingly, as plaintiffs' amendment failed to cure the defects in the Complaint, and  
19 further leave to amend would be futile, this action is DISMISSED WITH PREJUDICE.

20 **IT IS SO ORDERED.**

21 Dated: May 01, 2009

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23 CHARLES R. BREYER  
24 UNITED STATES DISTRICT JUDGE  
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